

06 CV 5672

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

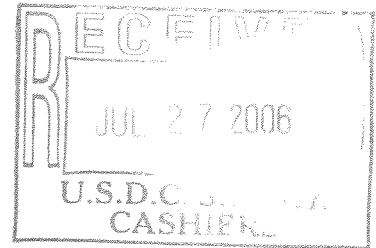
**JIMMY ENGLISH, individually and
on behalf of others similarly situated,**

Plaintiff,

V.

ECOLAB, INC.,

Defendant.



COMPLAINT

INTRODUCTION

1. The Defendant employed the Plaintiffs to apply pesticides. In that capacity, they regularly worked more than 40 hours per week for the Defendant. The Defendant unlawfully failed to pay them overtime compensation for the hours worked more than 40 in a week.
2. The named Plaintiff brings this action for unpaid overtime as a collective action for similarly situated current and former employees nation-wide.

JURISDICTION

3. The United States Code, Title 29, section 216(b), part of the Fair Labor Standards Act ("FLSA") confers jurisdiction upon this Court, as does 28 U.S.C. §1331 because this action arises under laws of the United States and 28 U.S.C. §1337 because this action arises under Acts of Congress regulating commerce. Jurisdiction over the claims for declaratory relief is conferred by 28 U.S.C. §§2201 and 2202.

VENUE

4. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1) because the

Defendant resides within this District.

PARTIES

A. The Plaintiff

5. The named Plaintiff, Jimmy English, was an employee of the Defendant. His Consent to Sue is attached at the back of this complaint.
6. The term “Plaintiffs” as used in this Complaint refers to the named Plaintiff and all current and former employees of the Defendant whose primary work responsibilities included application of pesticides at the Defendant’s customers’ places of business and who were not paid overtime compensation for hours worked more than 40 in a week.
7. The named Plaintiff brings this action as a collective action pursuant to the FLSA, 29 U.S.C. §216(b), on behalf of all Plaintiffs who were employed by the Defendant in the United States of America in the past 3 years.
8. Upon information and belief, the Defendant regularly engaged employees to apply pesticides and paid them on a salary plus commission basis without payment of overtime premium pay.

B. The Defendant

9. ECOLAB, INC. is a corporation that is a global developer and marketer of premium cleaning, sanitizing, pest elimination, maintenance and repair products and services for the world’s hospitality, institutional and industrial markets.
10. The Defendant lists its business address as Ecolab Center, St. Paul, Minnesota 55102.
11. Upon information and belief the Defendant corporation has gross revenues in excess of \$500,000 for all relevant periods herein.

12. The Defendant routinely conducts business within the Southern District of New York.
13. Upon information and belief, the Defendant operates an enterprise engaged in commerce within the meaning of the FLSA.
14. For each of the 3 years preceding the filing of this Complaint, the Defendant has employed 2 or more individuals “handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.”

FACTS

15. The named Plaintiff began his employment with Defendant in or about October 1998, and ceased his employment in or about February 2005.
16. The named Plaintiff’s job title was Service Specialist, and his primary job duties were applying pesticides in the Defendant’s customers places of business.
17. The named Plaintiff regularly worked more than 40 hours per week for the Defendant.
18. The Defendant failed to pay the named Plaintiff overtime compensation for all hours worked over 40.
19. The Defendant’s failure to pay the named Plaintiff the proper wages required by law was willful.
20. All actions and omissions described in this complaint were made by the Defendant directly or through its supervisory employees and agents.

CAUSE OF ACTION (OVERTIME)

21. The Defendant failed to pay premium overtime wages to the Plaintiffs in violation of the Fair Labor Standards Act, 29 U.S.C. §203, 207 *et seq.* and its implementing regulations.

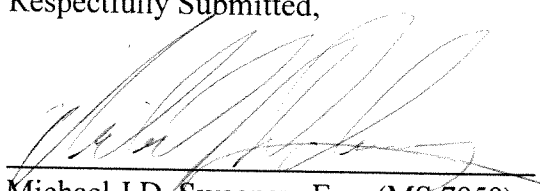
22. The Defendant's failure to comply with the FLSA caused the Plaintiffs to suffer loss of wages and interest thereon.

WHEREFORE, the Plaintiffs request that this Court enter judgment or an order:

- A. Declaring that the Defendant violated the Fair Labor Standards Act;
- B. Declaring that the Defendant's violations of the FLSA were willful;
- C. Awarding damages for the claims of unpaid wages as secured by the FLSA as well as an equal amount in liquidated damages;
- D. Awarding the Plaintiffs' costs, including expert witness expenses, and reasonable attorneys' fees; and
- E. Granting such further relief as the Court finds just.

Dated: July 24, 2006

Respectfully Submitted,



Michael J.D. Sweeney, Esq. (MS 7959)
Getman Law Office
9 Paradies Lane
New Paltz, NY 12561
(845) 255-9370

ATTORNEY FOR PLAINTIFFS